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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/676,876 09/29/00 LIBRIZZI

J JBP-521

HM12/1024

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EXAMINER

GEORGE, K

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

10/24/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.

09/676,876

Applicant(s)

LIBRIZZI ET AL.

Examiner

Konata M. George

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10, 11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Pri rity under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

Claims 10, 11 and 13-15 are pending in this application.

#### ***Action Summary***

1. Examiner requests the applicant to resubmit the references identified on the information disclosure statement files April 11, 2001.
2. Applicant's election with traverse of Group V in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the inventions of groups I to IV as related. This is not found persuasive because the claimed invention are drawn to treatment of different ailments.

The requirement is still deemed proper and is therefore made FINAL.

3. Examiner acknowledges the cancellation of claims 1-9 and 12.
4. The rejection of claims 10 and 11 under 35 U.S.C. 102(e) as being anticipated over Mettler is being maintained for the reasons stated in the previous office action.
5. The rejection of record under 35 U.S.C. 103(a) over Cronk et al. is being maintained for the reasons stated in the previous office action.

#### ***Response to Arguments***

6. Applicant's arguments filed September 21, 2001 have been fully considered but they are not persuasive.

Applicants argue that Mettler fails to disclose or suggest with any specificity the use of a particular fragrance. Also argued is that Mettler fails to disclose or suggest the composition capable of reducing cortisol levels and/or increasing sIgA levels of the mammal. It is argued that Cronk does not disclose the use of a sensory fragrance, the

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particular fragrances, reducing cortisol levels and/or increasing sIgA levels of the mammal, and the claimed materials according to claim 15. It is the position of the examiner that Mettler does disclose the claimed invention. Column 3, lines 33-41, discloses various fragrant oils which can be employed in the invention such as orange, rose and lavender. The composition of the prior art would inherently have the properties of reducing cortisol levels and/or increasing sIgA levels of the mammals since Mettler teaches the claimed invention. It is the position of the examiner that Cronk also discloses the claimed invention. Column 9, lines 35-67 bridging column 10, lines 1-39, describes fragrances and aromatic medications which are created by blending materials comprising odoriferous essential oils. These oils can be extracts from wood, flowers, or resins. Also, other fragrances or odoriferous compounds that can be used are benzaldehyde (aldehyde), benzyl acetate (ester) (col. 9, line 67), citronellol (alcohol) (col. 10, line 2), benzyl salicylate (benzenoid) (col. 10, line 33), and methyl dihydrojasmonate (ketone) (col. 10, lines 37-38) all of these compounds are in claim 15. It is the opinion of the examiner that the results of lower cortisol levels and/or increased sIgA levels can be achieved also by spraying an air freshener containing the fragrance, since claim 10 is directed only to a composition comprising a fragrance. It is the position of the examiner that since the prior art teaches the claimed invention then it will possess the properties of reducing cortisol levels and/or increasing sIgA levels of the mammal. The showing of unexpected results according to the applicant is not convincing to the examiner. It is the position of the examiner that applicant has not shown certain features of the tests such as how long where the panelist in the bath, the

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disposition of the panelist before the bath, the amount of water in the bath, who where the panelists, the composition of the water with the ingredients, etc.

### ***Conclusion***

7. Claims 10, 11 and 13-15 stand rejected.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### ***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

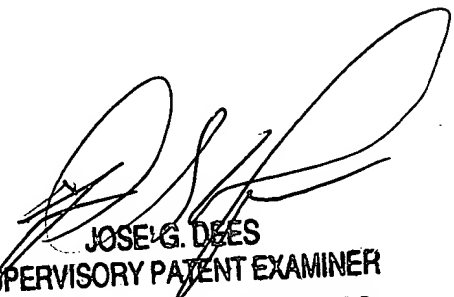
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached at (703) 308-4628. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Konata M. George

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER  
SUPERVISORY PATENT EXAMINER  
JOSE G. DEES  
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